locator, selector, entryman, or purchaser shall be entitled to a patent to the land located, selected, entered, or purchased, which patent shall contain a reservation to the United States of the deposits on account of which the lands so patented were withdrawn or classified or reported as valuable, together with the right to prospect for, mine, and remove the same, such deposits to be subject to disposal by the United States only as shall be hereafter expressly directed by law. Any person qualified to acquire the reserved deposits may enter upon said lands with a view of prospecting for the same upon the approval by the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting, the measure of any such damage to be fixed by agreement of parties or by a court of competent jurisdiction. Any person who has acquired from the United States the title to or the right to mine and remove the reserved deposits, should the United States dispose of the mineral deposits in lands, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the minerals therefrom, and mine and remove such minerals, upon payment of damages caused thereby to the owner of the land, or upon giving a good and sufficient bond or undertaking therefor in an action instituted in any competent court to ascertain and fix said damages: **Provided,** That nothing herein contained shall be held to deny or abridge the right to present and have prompt con-

sideration of applications to locate, select, enter, or purchase, under the land laws of the United States, lands which have been withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic mineral lands, with a view of disproving such classification and securing patent without reservation, nor shall persons who have located, selected, entered, or purchased lands subsequently withdrawn, or classified as valuable for said mineral deposits, be debarred from the privilege of showing, at any time before final entry, purchase, or approval of selection or location, that the lands entered, selected, or located are in fact non-mineral in character.

Sec. 3. That any person who has, in good faith, located, selected, entered, or purchased, or any person who shall hereafter locate, select, enter, or purchase, under the non-mineral land laws of the United States, any lands which are subsequently withdrawn, classified, or reported as being valuable for phosphate, nitrate, potash, oil, gas, or asphaltic minerals, may, upon application therefor, and making satisfactory proof of compliance with the laws under which such lands are claimed, receive a patent therefor, which patent shall contain a reservation to the United States of all deposits on account of which the lands were withdrawn, classified, or reported as being valuable, together with the right to prospect for, mine, and remove the same.

SECTION 31, LEASING ACT OF FEBRUARY 25, 1920.

"**Forfeiture or cancellation of leases.** Any lease issued under the provisions of sections 181 to 194, 201 to 208, 211 to 214, 221, 223 to 229, 241, 251, and 261 to 263 of this title may be forfeited and canceled by an appropriate proceeding in the United States district court for the district in which the property, or some part thereof, is located whenever the lessee fails to comply with any of the provisions of said sections, of the lease, or of the general regulations promulgated under said sections and in force at the date of the lease; and the lease may provide for resort to appropriate methods for the settlement of disputes or for remedies for breach of specified conditions thereof." (Feb. 25, 1920, c. 85, §31; 41 Stat. 450; U. S. Code, title 30, sec. 188.)

SECTION 14, LEASING ACT OF FEBRUARY 25, 1920.

Upon establishing to the satisfaction of the Secretary of the Interior that valuable deposits of oil or gas have been discovered within the limits of the land embraced in any permit, the permittee shall be entitled to a lease for one-fourth of the land embraced in the prospecting permit. The permittee shall be granted a lease for as much as one hundred and sixty acres of said lands, if there be that number of acres within the permit. The area to be selected by the permittee, shall be in compact form and, if surveyed, to be described by the legal subdivisions of the public-land surveys; if unsurveyed, to be surveyed by the Government at the expense of the applicant for lease in accordance with rules and regulations to be prescribed by the Secretary of the Interior and the lands leased shall be conformed to and taken in accordance with the legal subdivisions of such surveys; deposits made to cover expense of surveys shall be deemed appropriated for that purpose, and any excess deposits may be repaid to the person or persons making such deposit or their legal representatives. Such leases shall be for a term of twenty years upon a royalty of 5 per centum in amount or value of the production and the annual payment in advance of a rental of $1 per acre, the rental paid for any one year to be credited against the royalties as they accrue for that year, with the right of renewal as prescribed in section 226 of this title. The permittee shall also be entitled to a preference right to a lease for the remainder of the land in his prospecting permit at a royalty of not less than 12½ per centum in amount or value of the production, and under such other con-

ditions as are fixed for oil or gas leases in sections 181 to 194, 201 to 208, 211 to 214, 221, 223 to 229, 241, 251, and 261 to 263 of this title, the royalty to be determined by competitive bidding or fixed by such other method as the Secretary may by regulations prescribe. The Secretary shall have the right to reject any or all bids. (Feb. 25, 1920, c. 85, §14; 41 Stat. 442; U. S. Code, title 30, sec. 223.)

The soundness of the general rule that in determining the question of jurisdiction the facts alleged in the bill must be taken as true cannot be disputed, but it is equally well established that only *facts* alleged are so considered. Conclusions are not to be taken as true or correct, and, certainly, conclusions which are illuminated and shown to be erroneous by *facts* set up in the bill or facts of which the court may inform itself as matters of judicial knowledge, are not to be taken as correct. Even allegations of fact which are thus refuted are not to be taken as true.

See:

*People v. Oakland Water Front Co.*, 118 Cal. 234.

So it is that petitioner's allegations that he had a preference right to prospect on the land involved, and that such preference right was a vested one which could be divested only by personal service of written notice of an adverse application for a permit, are not necessarily to be taken as true, even where the court is considering its jurisdiction. Certainly a court has a right to examine the true facts of a case in order to determine whether it has or will take jurisdiction. In the case at bar, the petitioner's rights depend upon the entry made by him (R. 291-296) and his patent (R. 299-301), and are controlled and limited by the effect of the Act of July 17, 1914 (Appendix p. i), subject to which the petitioner made his entry in 1919; Section 20 of the Leasing Act of February 25, 1920 (see page 15 of this brief); and the Taft Withdrawal Order of December 30, 1910 (R. 286-289), all of which are before this court as appearing in the bill or mat-

ters within the judicial knowledge of the court. An examination of these will show that petitioner never had a preference right to a permit to prospect, for he made his entry expressly *subject* to the provisions of the Act of July 17, 1914, and not in the expectation of receiving full fee title to the lands so entered. Petitioner made his entry upon lands which were "withdrawn or classified as mineral at the time of entry". He made no attempt to have the classification of the land changed as he might have done under the Act of July 17, 1914. For petitioner to claim a preference right now is to deny that he had a right to make any entry upon the lands involved at all, because the Act of July 17, 1914 permitted a surface entry only upon lands which had been "withdrawn or classified" as mineral or which were "valuable for" mineral. These lands were admittedly "withdrawn" by the Taft Withdrawal Order of December 30, 1910. If they were not "withdrawn or classified" as mineral or "valuable for" mineral, they did not come within the permission accorded by the Act of July 17, 1914, were still under the effect of the complete withdrawal from entry of the Taft Withdrawal Order of December 30, 1910, and petitioner's entry, therefore, had no effect because the lands were, if not within the permissive effect of the Act of July 17, 1914, not open to entry of any kind at all. If the lands *were* "withdrawn or classified" as mineral, then petitioner had the right to make his surface entry, but by the terms of Section 20 of the Leasing Act of February 25, 1920, he has no preference right to a permit. Thus, in order to claim a preference right to a permit to prospect, petitioner must deny the very title papers upon which he must base any claim.